

IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D :18.11.2020

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.6685 of 2009

T.Elumalai

.. Petitioner

Vs

1. M/s.Bharat Heavy Electricals Limited,
Rep. by its Chairman and Managing Director,
Shri Fort, New Delhi - 110 049.
2. The General Manager,
Bharat Heavy Electricals Limited,
Boiler Auxilary Plant,
Ranipet-632405.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus directing the Respondents to appoint the Petitioner in the permanent service of the Respondent Company as a Fitter and issue such further or other appropriate orders or directions as this Court may deem fit and proper in the facts and circumstances.

For Petitioner : Mr.K.Sudalaikannu

For Respondents : Mr.F.B.Benjamin George for R-2

सत्यमेव जयते
O R D E R

I heard the learned counsel for the Petitioner and the learned counsel for Bharat Heavy Electricals Limited, the Respondents herein.

2. This writ petition is filed by a person who was appointed as an apprentice in 1989-1990 by the Respondents and subsequently worked between 1996 and 2001 as a NMR with intervals between each term of appointment. On that basis, the Petitioner claims permanent appointment.

3.The learned counsel for the Respondents submitted that the present dispute is squarely covered by the judgment in Writ

Appeal Nos.1047 to 1062 of 2008, judgment dated 10.02.2015 of the First Bench of this Court, which was subsequently followed in W.P. No.19075 of 2008 order dated 20.12.2018. The learned counsel for the Petitioner concurs with this statement and submits that this writ petition may be disposed of in terms of the judgment in the aforesaid writ appeal.

4. Upon perusal of the judgment in the writ appeal, it is evident that the Division Bench of this Court allowed the appeal of the Respondents herein by concluding that apprentices are governed by Section 22(1) of the Apprentices Act and cannot make a claim as a matter of right as prayed therein. It was further held that the settlement arrived at under Section 12(3) of the Industrial Disputes Act did not deal with apprentices and dealt with the absorption of NMRs in a phased manner. The relevant paragraphs of the said judgment are set out below:

"5.4. By applying the ratio laid down above to the facts of the case, the only conclusion that could be drawn is that Section 22(1) of the Apprentices Act would govern the cases and therefore, the private respondents cannot as a matter of right claim the relief sought for.

5.5. Submissions have been made on the settlement arrived at under Section 12(3) of the Industrial Disputes Act between the Unions and the appellants. A perusal of the settlement would show that it dealt with the cases of NMRs and their absorption in a phased manner. There is absolutely no reference to the status of an apprentice. Those NMRs were working on the relevant date as against the private respondents before us. Hence, we are of the considered view that the settlement has been arrived at on the fact situation, which has no bearing on the cases on hand. We may note, the private respondents herein were discharged from the services many years before the filing of the writ petitions.

5.6. We also take note of the fact that many of the private respondents did not have the age and qualification even at the time of filing the writ petitions. Much water had flown under the bridge thereafter. Some of them tried to get the appointment by participating in the selection process subsequently in pursuant to the orders passed by this Court, by which, certain relaxation was also given. Unfortunately success eluded them. We also do not find any acceptable reason for approaching the Court belatedly. Though the question of delay and laches is not one of law than that of practice and prudence,

the continued unexplained silence of the private respondents, in our considered view also, deserves to be taken note of while exercising the extraordinary discretionary jurisdiction under Article 226 of the Constitution of India. A feeble attempt made taking umbrage under the ban on recruitment cannot be accepted as it is neither factually established nor there is any material to show that it prevented further course of action till the filing of the writ petitions. The writ petitions are filed on a span of seven years. In view of the foregoing reasons, we are unable to accept the reasoning of the learned single Judge.

6. In the result, the orders passed by the learned single Judge are hereby set aside and the writ appeals stand allowed. Consequently, the writ petition is dismissed. No costs."

5. Upon considering the submissions and examining the above judgment, it is clear that this case is squarely covered by the terms of the judgment of the Division Bench inasmuch as the Petitioner admittedly ceased to be employed even as a NMR after 2001, whereas the writ petition was filed in 2009. Accordingly, this writ petition is disposed of in terms of the aforesaid judgment dated 10.02.2015. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rrg
To

1.M/s.Bharat Heavy Electricals Limited,
Rep. by its Chairman and Managing Director,
Shri Fort, New Delhi - 110 049.

2.The General Manager,
Bharat Heavy Electricals Limited,
Boiler Auxilary Plant,
Ranipet - 632 405.

W.P.No.6685 of 2009

UM(CO)
RMP(11/12/2020)